



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

MAY - 3 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Jeffrey S. Briggs, Chief Operating Officer
Green Plains Bluffton, LLC
1441 Adams Street
Bluffton, Indiana 46714

Dear Mr. Briggs:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Green Plains Bluffton, LLC, (Green Plains) CAA Docket No. CAA-05-2012-0022. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on MAY - 3 2012.

Pursuant to paragraph 27 of the CAFO, Green Plains must pay the civil penalty within 30 days of the date the CAFO was filed, MAY - 3 2012. Your check must display the case name Green Plains Bluffton, LLC, the docket number, CAA-05-2012-0022, and the billing document number, 2751203A024.

Please direct any questions regarding this case to James Morris, Associate Regional Counsel, at (312) 886-6632.

Sincerely,

Sara Breneman, Chief
Air Enforcement and Compliance Assurance Section MI/WI

Enclosure

cc: John Breshlin, Acting Regional Judicial Officer/C-14J
Regional Hearing Clerk/E-19J
James Morris/C-14J
Phil Perry, Chief
Indiana Department of Environmental Management

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No.	CAA-05-2012-0022
)		
Green Plains Bluffton, LLC)	Proceeding to Assess a Civil Penalty	
Bluffton, Indiana,)	Under Section 113(d) of the Clean Air Act	
)	42 U.S.C. § 7413(d)	
Respondent.)		
_____)		

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules"), as codified at 40 CFR Part 22.

2. Complainant is the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5.

3. Respondent is Green Plains Bluffton, LLC, a limited liability company doing business in Indiana, and a wholly-owned subsidiary of Green Plains Renewable Energy, Inc.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 CFR § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

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Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent waives its right to request a hearing as provided at 40 CFR § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. On June 28, 1989, EPA issued guidance on federally enforceable state operating permits (FESOPs) establishing federally enforceable limits. 54 Fed. Reg. 27274.

10. On August 18, 1995, EPA approved the Indiana FESOP program, 326 IAC 2-1-3.2 and 326 IAC 2-8-4, as part of the federally enforceable Indiana State Implementation Plan (SIP), effective October 17, 1995. 60 Fed. Reg. 43008-43012; 40 CFR §§ 52.770(c)(97) and (c)(98).

11. On February 20, 2008, EPA approved a revision to the Indiana SIP consisting of an amendment to 326 IAC 8-5-6 that added a volatile organic compound (VOC) rule for fuel grade ethanol production at dry mills. 73 Fed. Reg. 9201-9203; 40 CFR § 52.770(c)(182).

12. Pursuant to the SIP at 326 IAC 2-8-6(b), all terms and conditions in a FESOP, including any provisions designed to limit a source's potential to emit, are enforceable under the Act by EPA.

13. The SIP at 326 IAC 8-5-6(e) provides that the owner or operator of a fuel grade ethanol dry mill production plant that was constructed or modified after April 1, 2007, and that installs and uses a thermal oxidizer as a control device, shall ensure and verify initial and continuing compliance with the control efficiency requirement by using the three-hour average operating temperature of the oxidizer, as measured by a continuous temperature monitor. The

three-hour average operating temperature must be greater than, or equal to, the minimum operating temperature established during the most recent compliance demonstration.

14. The SIP at 326 IAC 2-8-4(5) states that the permittee must comply with all conditions of the FESOP. Noncompliance with any provisions of the FESOP is grounds for an enforcement action, as well as for FESOP modification, revocation and reissuance, termination, or for the denial of a FESOP application renewal.

15. Federal regulations at 40 CFR § 52.23 provide, among other things, that a person who fails to comply with any permit condition issued in accordance with a SIP-approved operating permit, or with any approved regulatory provision of a SIP, is in violation of, and subject to, an enforcement action under Section 113 of the Act.

16. The Administrator of EPA ("Administrator") may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for violations that occurred between March 15, 2004, and January 12, 2009, and may assess a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for violations that occurred after January 12, 2009, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

17. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

18. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this CAFO.

EPA's Factual Allegations and Alleged Violations

19. Green Plains Bluffton, LLC ("Green Plains"), is an Indiana limited liability company authorized to do business in the State of Indiana.

20. Green Plains owns and operates a fuel grade ethanol dry mill production facility at 1441 South Adams Street, Bluffton, Indiana (the "facility").

21. The facility includes four natural-gas-fired DDGS dryers, identified as EU029 through EU032, with emissions from those dryers controlled by two recuperative thermal oxidizer and heat recovery steam generating systems, identified as C10/B10 and B11, and exhausting to stack S10.

22. On March 13, 2007, the Indiana Department of Environmental Management (IDEM) issued to Green Plains FESOP # F179-23641-00033. FESOP # F179-23641-00033 limited the facility's NO_x emissions to 100 tons per year. FESOP #F179-23641-00033 also established the following permit conditions:

- (a) Emissions from thermal oxidizers systems C10/B10 and B11 (including the four DDGS dryers EU029 through EU032) shall not exceed 21.20 pounds of NO_x per hour; and
- (b) On and after the date that stack test results are available, [Green Plains] shall operate the thermal oxidizers system, C10, at or above the hourly average temperature as observed during the compliance stack test.

23. On or about October 20, 2010, EPA inspected the facility. On April 1, 2011, EPA issued a request for information to the facility under Section 114 of the Act, 42 U.S.C. § 7414. On or about April 21, 2011, Green Plains responded to EPA's Section 114 request.

24. Green Plains has a Continuous Emissions Monitoring System (CEMS) that records information, including but not limited to, average hourly NO_x emissions in lb/MMBtu and average natural gas flow in MMBtu.

25. Based on calculations performed by EPA using CEMS data, EPA determined that, intermittently during the time period from November 20, 2008, through April 6, 2011, Green Plains exceeded the NO_x emission limit of 21.20 pounds NO_x per hour at the thermal oxidizers system C10, in violation of FESOP #F179-23641-00033, Emission Limit D.3.2(d), which, in turn, violated 326 IAC 2-8-4 and 40 CFR § 52.23.

26. Based upon information obtained by EPA through its Section 114 information request, including combustion chamber temperature records submitted by Green Plains, EPA determined that, intermittently during the time period from February 6, 2009, through April 1, 2011, Green Plains operated the thermal oxidizer system, C10, below the required three-hour average temperature, as specified in FESOP #F179-23641-00033, Emission Limit D.3.14(c), which constituted a violation of 326 IAC 2-8-4, 326 IAC 8-5-6, and 40 CFR § 52.23.

Civil Penalty

27. Based on its analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case and other factors such as cooperation, and prompt return to compliance, EPA has determined that an appropriate civil penalty to settle this action is \$ 60,000.00.

Within 30 days after the effective date of this CAFO, Respondent must pay a \$ 60,000.00 civil penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties

Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

The check must note Respondent's name, docket number of this CAFO, and the billing document number.

28. Upon payment of the civil penalty pursuant to paragraph 27 of this CAFO, Respondent must send a notice of payment that states Respondent's name, the docket number of this CAFO, and the billing document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch, and to James Morris, Office of Regional Counsel, at the following addresses:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604-3590

James Morris
Associate Regional Counsel
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604-3590

29. This civil penalty is not deductible for federal tax purposes.

30. If Respondent does not timely pay the civil penalty, EPA may request the Attorney General of the United States to bring an action to collect any unpaid portion of the penalty, with interest, plus nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

31. Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury pursuant to 26 U.S.C. § 6621(a)(2). Respondent must pay the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue. This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter. 42 U.S.C. § 7413(d)(5).

General Provisions

32. This CAFO resolves Respondent's liability for federal civil penalties only for the violations alleged in this CAFO.

33. The CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law, apart from the violations of law alleged by EPA in this CAFO.

34. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in paragraph 32, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

35. Because FESOP #F179-23641-00033 expired in April of 2011, and, from April of 2011 to the present, Respondent has been operating under a Part 70 permit issued by IDEM, #T179-29393-00033, Respondent certifies that it is in compliance with its current permit #T179-29393-00033.

36. This CAFO constitutes an “enforcement response” as that term is used in EPA’s Clean Air Act Stationary Civil Penalty Policy to determine Respondent’s “full compliance history” under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

37. The terms of this CAFO bind Respondent, its successors, and assigns.

38. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and attorneys fees in this action.

40. This CAFO constitutes the entire agreement between the parties.

**Consent Agreement and Final Order
In the Matter of: Green Plains Bluffton, LLC
Docket No.**

For Green Plains Bluffton, LLC

4/16/2012
Date

Jeffrey S. Briggs
Jeffrey S. Briggs
Chief Operating Officer
Green Plains Bluffton, LLC

For United States Environmental Protection Agency

5/1/12
Date


George Czerniak
George Czerniak
Acting Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Green Plains Bluffton, LLC
Docket No. CAA-05-2012-0022

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding, pursuant to 40 CFR §§ 22.18 and 22.31. IT IS SO ORDERED.

5-2-12
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Green Plains Bluffton, LLC
Docket No. CAA-05-2012-0022

Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2012-0022 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original copy to Respondent by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Jeffrey S. Briggs, Chief Operating Officer
Green Plains Bluffton, LLC
1441 Adams Street
Bluffton, Indiana 46714

I certify that I delivered a correct copy of the CAFO by intra-office mail, addressed as follows:

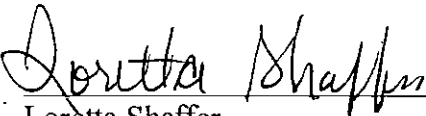
John Breshlin
Acting Regional Judicial Officer
U.S. Environmental Protection Agency
77 W. Jackson Boulevard / Mail Code C-14J
Chicago, Illinois 60604

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MAY -3 PM 2:14

I also certify that I mailed a correct copy of the CAFO by first-class mail to:

Phil Perry, Chief
Compliance and Enforcement Branch
Office of Air Quality
Indiana Department of Environmental Management
100 North Senate Avenue, room IGCN 1003
Indianapolis, Indiana 46206-6015

On the 3 day of May 2011.


Loretta Shaffer
Office Automation Assistant
PAS Section

CERTIFIED MAIL RECEIPT NUMBER:

7009 1680 0000 7673 9627